

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SUZANNE CHAPMAN,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2019-0150
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On August 22, 2019, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Suzanne Chapman, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by September 6, 2019, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be allowed to use her second election to transfer from the Florida Retirement System (“FRS”) Investment Plan to the FRS Pension Plan without having to pay the statutorily-required “buy-in” amount hereby is denied. Petitioner had claimed that she had been placed in the FRS Investment Plan without her knowledge and

consent. Petitioner further claimed she had not received either a confirmation of her election into the FRS Investment Plan or any quarterly statements. However, record evidence demonstrates that Petitioner did receive a confirmation of her election, as well as quarterly statements. Additionally, Petitioner designated both a primary and contingent beneficiary when she initially enrolled in the FRS Investment Plan. Petitioner could not produce any evidence to demonstrate that her election was taken without her knowledge and consent.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 20th day of September, 2019, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406


FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Suzanne Chapman, pro se, both by email transmission at [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 20th day of September, 2019.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

SUZANNE CHAPMAN,

Petitioner,

vs.

CASE NO. 2019-0150

STATE BOARD OF ADMINISTRATION.

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on June 19, 2019, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Suzanne Chapman, pro se

For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
PO Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner is properly in the Florida Retirement System (FRS) Investment Plan, and if so, whether Respondent should grant her request to make a second election to transfer to the FRS Pension Plan without having to pay the "buy-in" amount as required by statute.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-8 and were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner began employment with the Palm Beach County Board of County Commissioners, an FRS-participating employer, in August of 1986. At that time, the Pension Plan was the only retirement program available for eligible employees, thus Petitioner was enrolled in the Pension Plan.
2. Petitioner terminated employment with the Palm Beach County School Board in June 2000.
3. Petitioner returned to employment with the Palm Beach County School Board on August 7, 2017, and had until January 31, 2018, to make an initial election between the Pension Plan and the Investment plan.
4. A Retirement "Choice Kit" was mailed to Petitioner's home address at the end of September 2017, briefly explaining the differences between the Investment Plan and the Pension

Plan, setting out the deadline for Petitioner to make her choice, and inviting her to visit a website or call to obtain more information and advice.

5. The third-party administrator provided records showing receipt of an online EZ Retirement Plan Enrollment Form, ELE-1-EZ, located on the MyFRS.com website, indicating that Petitioner, or someone on her behalf, elected the Investment Plan on January 25, 2018, six (6) days prior to her choice deadline. This election established an effective date of February 1, 2018. Verification of Petitioner's enrollment provided by Respondent's third-party administrator indicates that Petitioner entered her electronic signature upon submitting her electronic enrollment form.

6. A confirmation of enrollment into the Investment Plan was created and sent to Petitioner on January 26, 2018, again at her home address of record, which Petitioner testified was the correct address. This document was headed, in bold and larger font than the remaining text, "Florida Retirement System Confirmation of Enrollment – Investment Plan." It noted the investment fund selected at the election stage, and informed Petitioner of the option to cancel her election within a specified time period.

7. Respondent also produced records of quarterly statements sent to Petitioner tracking the performance of her investment account beginning in the first quarter of 2018 after her initial enrollment. Petitioner's quarterly statement for Q1 2018 lists employee and employer contributions to her investment account, in addition to an "other deposit" of \$98,964.08. This statement and all others generated thereafter also include a breakdown of Petitioner's account balance sources including a category called "DB Plan Transfer," representing the value of the funds transferred from Petitioner's Pension Plan when she elected to enroll in the Investment Plan.

8. At the top of each quarterly statement, the document says, "Florida Retirement System Investment Plan."

9. Petitioner's quarterly statements demonstrate that Petitioner designated both a primary and a contingent beneficiary.

10. Petitioner confirmed that both the physical mailing address and the email addresses Respondent had on record for her were correct.

11. Petitioner stated that she had asked her employer's IT staff to search her work email account for any communications regarding her FRS retirement accounts, but represented that those staff told her they could not find anything.

12. After learning that she would have to pay additional funds to utilize her second election to buy-in to the Pension Plan, Petitioner filed a Request for Intervention on April 10, 2019, asking to be enrolled in the Pension Plan without having to pay the buy-in amount. Petitioner stated that she believed she was "a returning employee in a Florida public school," and thus remained in the Pension Plan when she returned to the Palm Beach County School Board in 2017. Her request was denied.

13. Petitioner filed a Petition for Hearing dated May 7, 2019, again requesting that she be enrolled in the Pension Plan without having to pay the buy-in. This administrative proceeding followed.

CONCLUSIONS OF LAW

14. Respondent's records demonstrate that the action complained of, Petitioner being placed in the Investment Plan, occurred effective February 1, 2018 following the January 25, 2018 submission to Respondent of an "EZ Retirement Plan Enrollment Form" bearing Petitioner's name,

social security number, date of birth, and other personal identifying information, as well as an electronic signature in her name.

15. Petitioner was mailed, to her admittedly correct home address, at least the Retirement Choice Kit and the Confirmation of Enrollment – Investment Plan documents. Beneficiaries also were designated for Petitioner’s account, consisting of her spouse as primary beneficiary and her daughter as secondary beneficiary.

16. Petitioner has not come forward with any documentary evidence or audio recording demonstrating that the action taken by Respondent in 2018 was done without her knowledge and consent. Rather, all of the documentary evidence demonstrates that Petitioner elected the Investment Plan in January of 2018, and never took action to switch or undo her initial election.

17. An electronic signature on an online enrollment form is equivalent to a handwritten signature for purposes of validity, enforceability, and admissibility. Rule 19-11.006(2)(h), which sets out additional enrollment procedures for new hires, provides that “[a] member submitting an enrollment by electronic means with an electronic signature is deemed to have agreed that *the electronic signature is equivalent to a handwritten signature* for purposes of validity, enforceability, and admissibility.” (Emphasis added). An electronic signature can be “any symbols or other data in digital form attached to an electronically transmitted document as verification of the sender’s intent to sign the document.” R. 19-11.001(21), F.A.C. “By submitting an electronic signature, a member acknowledges that the electronic signature is the same as a handwritten signature for the purposes of validity, enforceability, and admissibility.” *Id.* Here, Respondent’s records reflect that Petitioner elected to enroll in the Investment Plan via “electronic means,” and her “electronic signature” accompanying that online enrollment has the same force and effect as a handwritten signature on a hard-copy election form.

18. Petitioner was actually or constructively on notice of her enrollment in the Investment Plan but failed to cancel the election within the allowed grace period. Specifically, a confirmation of enrollment into the Investment Plan was generated and mailed to Petitioner at the same address listed on her Request for Intervention and Petition for Hearing.

19. Respondent's records indicate that Petitioner submitted an electronic election to enroll in the Investment Plan and has been sent a confirmation of that enrollment and quarterly statements demonstrating her participation in the Investment Plan since the end of the first quarter of 2018. Petitioner's quarterly statements also indicate that she designated a primary and secondary/contingent beneficiary for the account when she enrolled in the Investment Plan. Petitioner failed to rescind her initial election within the allowed grace period, therefore Respondent is without authority to rescind her initial election now.

20. Movement from the FRS Investment Plan to the Pension Plan is governed by 121.4501(4)(f)3., Florida Statutes. This section states, in pertinent part:

Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

§ 121.4501(4)(f)3., Fla. Stat. (emphasis added).

21. There is no statutory provision authorizing a switch from the Investment Plan to the Pension Plan without using a second election and paying the "buy-in" amount. If Petitioner chooses to utilize her second election to switch to the FRS Pension Plan, she must do so in accordance with the statutory requirement that she pay the buy-in amount associated with that

switch, as it is Petitioner who carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. Young v. Dep't of Community Affairs, 625 So. 2d 831 (Fla. 1993); Dep't of Transp. v. J.W.C., 396 So. 2d 778 (Fla. 1st DCA 1981).

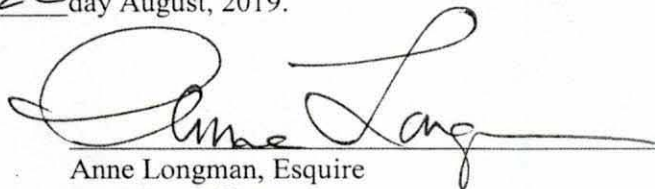
22. Respondent is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

23. Respondent does not have the authority to waive the statutorily mandated Pension Plan buy-in amount, and therefore cannot grant the relief requested in the Petition for Hearing.

RECOMMENDATION

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 22^d day August, 2019.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
mini.watson@sbafla.com
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Suzanne Chapman
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
Ruth E. Vafek, Esquire
123 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
dminnis@ausley.com
rvafek@ausley.com
jmcvaney@ausley.com